

**"By failing to prepare, you are preparing to fail."**

**Benjamin Franklin**

Further to the announcement from HM Treasury on its approach to amending financial services legislation under the European Union (Withdrawal) Act, the FCA have published a statement on their website providing stakeholders with an update on how they are preparing for the UK leaving the European Union.

## MiFID complaints reporting requirement

MiFID II sets out complaint handling provisions for MiFID complaints, which were incorporated into the Dispute Resolution: Sourcebook in the FCA Handbook. Under these rules, MiFID firms are required to report information on complaints about their MiFID activities to the relevant competent authority. However these reporting rules go further than they did under MiFID I rules.

MiFID firms are now required to report information to FCA on complaints received from retail clients as well as professional clients and/or eligible counterparties if they are in relation to MiFID activities.

What action do I need to take?

Your firm will need to alter the complaints data that will be submitted to the FCA. The information will need to be captured in the DISP 1 Annex 1 complaints report via Gabriel as normal. The report does not distinguish between the different customer types so please ensure MiFID complaints are captured for all types of complainant.

## EBA consults on guidelines on outsourcing

The EBA has published a consultation paper setting out draft guidelines on outsourcing, together with an annex relating to the minimum content of the register in which a firm should document its outsourcing.

The guidelines are designed to establish a more harmonised framework for outsourcing arrangements of a range of financial institutions, including credit institutions and investment firms subject to the CRD IV Directive, payment institutions subject to the revised Directive on payment services and electronic money institutions subject to the second Electronic Money Directive. They provide a definition of outsourcing and specify the criteria for assessing whether or not an outsourced activity, service, process or function is critical or important.

## Firms must ready to report legal entity identifiers when grace period ends July 3<sup>rd</sup>

The six-month transitional period during which firms could submit MiFID II-required transaction reports without a legal entity identifier (LEI) will end on **July 3**. At that time the FCA says firms and their clients must have LEIs in order to trade.

"After July 3 firms will be required to gather (and be in a position to report) their clients' LEIs before they trade on their behalf. We do not believe this will cause any significant disruption for firms. The FCA has been working with the industry to ensure that the vast majority of transactions do have the right client LEI information".

The Global Legal Entity Identifier Foundation website shows that there are nearly 127,000 UK entities with LEIs, which is within the range that the FCA calculated was necessary. Firms also report the vast majority of their clients, by transaction volumes, have acquired an LEI.

Since December 20, when ESMA announced the six-month transitional period, for LEIs issued has increased from 908,488 to 1,195,362, up 286,874.

## FCA sets out plans for regulation of claims management companies

The FCA has published draft rules outlining how it will regulate claims management companies (CMCs) when regulation passes to the FCA on **1 April 2019**.

The FCA's proposal will require CMC's to:

- provide a potential customer with a short summary document containing important information such as an illustration of fees charged and an overview of the services the CMC will provide.
- highlight any free alternatives to using the CMC, such as ombudsmen schemes, in marketing material and pre-contract disclosures.
- hold capital linked to the type of business they undertake and further new requirements to protect any money firms hold on behalf of clients
- record and keep all calls with customers for at least 12 months.

The FCA has also set out its approach to authorising both existing and new CMCs. Firms will need to notify their intention to register for Temporary Permission and pay the relevant fee to the FCA before 1 April 2019. Firms will then go through the FCA's authorisation process. New firms will need to decide whether to begin their authorisation process with the Claims Management Regulator or wait and submit an application to the FCA after **April 2019**.

## NCSC and ICO release GDPR Security Outcomes

The National Cyber Security Centre (NCSC) and the ICO recently released joint guidance, which describes a set of technical security outcomes that are considered to represent appropriate technical and organisational measures under the GDPR. The outcomes are intended to provide a common set of expectations that can be met by organisations either through following existing guidance (such as the NCSC Small Business Guide or the ICO's Practical Guide to IT Security), using particular services, or through the development of a bespoke approach. The NCSC and ICO note that an outcomes-based approach enables scaling to any size or complexity of organisation or data processing operation.

## The FCA's approach to competition and innovation

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered a speech at Competition Policy 2018: The relationship between antitrust, innovation and investment, Chatham House, London.

Key highlights included:

- The FCA's approach to competition is driven by our objectives to make markets function well and promote effective competition in the interests of consumers.

- This last part – in the interests of consumers – is crucial, because not all competition is good competition.
- We create the conditions that allow competition to work as well as it can through initiatives like Innovate.
- Open Banking has the potential to solve some of the big problems we see in competition by increasing consumer engagement.
- But new technologies also present challenges, for example in the massive collection of customer data.

**FCA's response to Law Commission recommendations on pension funds and social investment**

In June 2017, the Law Commission made recommendations to Government and the FCA on Pension Funds and Social Investment. A final joint response to this has now been published.

The FCA intend to consult on rule changes in the first quarter of 2019 requiring IGCs to report on their firm's policies on:

- evaluating environmental, social and governance (ESG) considerations, including climate change
- taking account of members' ethical concerns
- stewardship

At the same time, the FCA will also consult on introducing related guidance for providers of workplace personal pension schemes on considering financial factors (such as ESG risks and climate change) and non-financial factors (such as responding to members' ethical concerns) when making investment decisions.

**The FCA opens 24 investigations into cryptocurrency businesses**

Regulatory scrutiny is mounting on unauthorised businesses involved in cryptocurrencies, with 24 enquiries having been opened by the FCA. The enquiries show how seriously the FCA is taking its approach towards regulation of cryptos, as they look to close down loopholes that allow unauthorised businesses to use Initial Coin Offerings to raise investments from retail clients.

Additionally, the FCA confirmed there have been seven whistleblower reports opened involving cryptocurrencies so far in 2018. It is crucial the FCA is able to close loopholes and bring businesses inside the correct regulatory perimeter before there are too many problems with this market resulting in further cases of consumer detriment.

Ultimately, a well-managed crypto environment is good for both investors and businesses and in the interest of the Regulators. As part of the its 2018/19 business plan, the FCA is planning on launching a review into cryptocurrencies and their regulation in conjunction with the Bank of England and HMRC.

**GDPR has become law – what should you do next?**

Are you staying on top of GDPR compliance?

To ensure your organisation continues to be compliant post-GDPR deadline, consider the following:

- Do you process or store large amounts of personal data, whether for employees, individuals external to the organisation, or both? If yes, have you appointed a Data Protection Officer (DPO) who is responsible for overseeing data protection strategy and implementation to ensure compliance with the GDPR?
- Are you fully aware of what personal information you hold and where within your organisation this information is maintained and managed?
- Have you communicated your data privacy procedures to your external stakeholders? Has your privacy policy been reviewed to ensure this is compliant under GDPR?
- Have your contacts expressed explicit consent to process data? For example, have they approved to receive communications?
- Do you use third parties to process information on your behalf? If so, have you considered the data controller and data processor requirements under GDPR?
- What is your organisation's policy for reacting to a data breach? Will this policy be able to meet the data breach reporting deadlines set under GDPR?

**Record Keeping Obligations in light of GDPR**

Your obligations to retain records under the Criminal Justice (Money laundering and Terrorist Financing) Act 2010 as amended **have not** changed in light of the enactment of the Data Protection Act 2018.

Designated persons are obliged under Section 55 of the Criminal Justice (Money laundering and Terrorist Financing) Act to retain records for not less than 5 years. Such records include documents used to identify customers and verify their address.

**The FCA's role in preparing for Brexit**

The FCA continue to prepare for a range of scenarios, including one in which the UK leaves the EU on 29 March 2019 without a withdrawal agreement and implementation period having been ratified between the UK Government and the EU. The EU (Withdrawal) Act will transfer and convert existing EU law at the point of exit into UK law. It also gives powers to ministers to make secondary legislation to amend this legislation to ensure it functions effectively when the UK leaves the EU. As part of this, the Treasury intends to task the FCA with amending and maintaining EU binding technical standards (detailed EU rules). These rules sit underneath EU regulations and directives and provide technical detail of how those requirements must be met.

The FCA will also be amending their Handbook to ensure it is consistent with changes the Government is making to EU law and it functions effectively when the UK leaves the EU. In the run up to March 2019, the FCA will limit Handbook changes unrelated to Brexit to those identified as core priorities in the Business Plan as well as other essential items.

**FCA form and checklist for MMF Regulation applications**

The FCA has updated its fund authorisation webpage to add the following:

- Form MMF. This is the form to be used by a UK AIFM or an EEA AIFM to apply for the authorisation of a new fund under the Regulation on money market funds (MMF Regulation) (or for a UK AIFM to additionally apply for approval to manage the MMF under the AIFMD. It can also be used by a UK AIFM or an EEA AIFM to apply for authorisation or approval to manage an existing MMF and to apply for FCA authorisation of a non-EU AIFM as an MMF.
- A checklist for completing Form MMF.

**BoE Governor speech on responsible openness in financial sector**

Mark Carney, BoE Governor delivered a speech at Mansion House on responsible openness in the financial sector.

In the speech, Dr Carney argues, that the increased opening of emerging market economies could significantly boost UK prosperity, provided that the associated risks of an open system are managed responsibly. He suggests that responsible openness rests on three pillars:

- strong global standards;
- deep supervisory co-operation, which requires international authorities to work together and share relevant information; and
- ending "too big to fail", through mechanisms such as the BoE's resolution regime

**ESMA speech on PRIIPs Regulation implementation issues**

Steven Maijor, ESMA Chair, delivered a speech on consumer protection. The speech contains a section about the implementation of the Regulation on KIDs for PRIIPs. Mr Maijor confirms that ESMA is working on identifying and addressing implementation issues, including:

- The scope of the PRIIPs Regulation. The ESMA is of the view that there is a need to provide clarity to market participants, notably in relation to corporate bonds or "non-structured" securities..
- Performance scenarios. The ESMA will soon publish information to provide clarity on the issue of the presentation and calculation of performance scenarios for PRIIPs with a recommended holding period of less than one year. The ESMA is also working to ensure consistency in the approach taken by PRIIPs manufacturers and distributors on the issue of the use of past performance in performance scenarios.
- Transaction costs. The ESMA has requested data from the fund industry to assess whether the methodology on negative transaction costs and high transaction costs needs to be amended.

**ESMA adopts final product intervention measures on CFDs and binary options**

The European Securities & Markets Authority (ESMA) has formally adopted new measures on the provision of contracts for differences (CFDs) and binary options to retail investors. The measures were published in the Official Journal of the European Union on 1 June 2018 and will start to apply from **2 July 2018** for binary options and from **1 August 2018** for CFDs.

ESMA states that this notice period should be used by firms to fully implement the product intervention measures, which will apply for at least three months from the commencement date.

The restrictions on the marketing, distribution or sale of CFDs to retail investors consist of the following measures:

- Leverage limits on opening positions
- Margin close-out protection on a per account basis
- A negative balance protection on a per account basis
- Preventing the use of incentives by a CFD provider
- A firm specific risk warning delivered in a standardised way

**The FCA acts to protect consumers' pension pots**

The FCA has launched a consultation on a package of measures designed to protect consumers, improve engagement and promote competition in the retirement income market.

The consultation accompanies the publication of the final report of the Retirement Outcomes Review, the FCA's in-depth look at how the pensions and retirement income sector has been working since the pension freedoms were introduced in 2015. The FCA found that, while consumers have welcomed the freedoms, some are at risk of harm. For example, the FCA estimates that some drawdown customers could receive 37% more retirement income from their pot every year by investing in a mix of assets rather than cash. Defined contribution pension pots will grow significantly in the coming years, so it's important to put this market on a good footing and keep it under review.

The measures will help consumers at key points when they make decisions about what to do with their pension pot, as well as providing ongoing support to consumers once they have accessed their pension savings. They include improvements to the clarity and timings of communications prior to people making decisions about what to do with their pension pot, simplifying the options that people have, and the ongoing communications people receive.

**Enforcement cases**

**FCA fines and imposes a restriction on Bank for anti-money laundering systems failings**

The Financial Conduct Authority (FCA) has fined a large public sector bank £896,100 and has imposed a restriction, preventing it from accepting deposits from new customers for 147 days.

Between 26 November 2012 and 29 January 2016, the bank failed to maintain adequate AML systems and failed to take sufficient steps to remedy identified weaknesses, despite having been notified of shortcomings in its AML systems and controls. The failures were systemic and affected almost all levels of its business and governance structure including: (1) Senior Management; (2) Governance / Oversight; (3) three Lines of Defence; (4) Money laundering reporting function; and (5) AML systems and controls.

As a result, the bank breached Principle 3 (taking reasonable steps to organise its affairs responsibly and effectively, with adequate risk management systems) of the FCA's Principles for Businesses.

The bank has agreed to resolve the case and qualified for a 30% discount.

### **FCA secures increased confiscation order against convicted fraudster**

The confiscation order made against a convicted fraudster, has been increased from £1 to £31,905.33. The enlarged order must be paid within 28 days or the fraudster will face a further 14 months in prison.

The amount of the increased confiscation order represents monies currently held in a Santander bank account in his name. The bulk of the balance in the account is as a result of a payment of £31,825.18 made by a supermarket chain upon the death his mother who worked for the said chain. He received the sum as one of three beneficiaries named by her.

In addition, the Learned Judge found that the fraudster's assertion that he had rejected his inheritance from his late mother was a sham and that he is therefore entitled to a one third share of her estate on top of the payment from the the company she worked at. The value of his share will be determined once the estate has been administered and the amount of the confiscation order will be further increased as a result. As at today's date, his share is believed to be worth in the region of £145,000.

Mark Steward, Executive Director of Enforcement and Market Oversight at the Financial Conduct Authority said:

"His activities defrauded over 300 victims and today's outcome sends a clear message that crime does not pay. The FCA will continue to take steps to ensure that assets are confiscated from those who benefit from their criminal conduct, including seeking increased confiscation orders, where appropriate."

### **Adviser banned over fake qualifications**

The director of a one-man financial advice firm has been fined and disqualified by the FCA for issuing false qualification documents.

The director fabricated two statements of professional standings, claiming they were issued by the CII. According to a final notice, the FCA found the SPS 1 and SPS 2 documents gave the misleading impression that he had appropriate qualifications to provide investment advice to retail customers. The regulator says he knowingly provided the fabricated documents, as well as making numerous other false and misleading statements concerning his qualifications.

The director was issued with a fine of £29,300 which is to be paid in 17 instalments of £1,650 over an 18-month period. He is also banned from performing any sort of regulated activity.

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- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
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#### **UK and Ireland**

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- AIFM Authorisation
- AIFM monitoring (including risk services)
- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.
- Related Training

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